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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**SMITH & NEPHEW, INC, and JOHN O.
HAYHURST, M.D.,**

Case No. 3:04-cv-00029-MO

Plaintiffs,

v.

ARTHREX, INC.,

Defendant.

**ARTHREX, INC.'S RENEWED
MOTION FOR JUDGMENT AS A
MATTER OF LAW OR
ALTERNATIVELY A NEW TRIAL ON
THE ISSUE OF LOST PROFITS**

REQUEST FOR ORAL ARGUMENT

LOCAL RULE 7-1 CERTIFICATION

Pursuant to Local Rule 7-1, counsel for Defendant Arthrex, Inc. (“Arthrex”) certifies that they made a good faith effort to resolve this issue with counsel for Plaintiffs Smith & Nephew, Inc. and John O. Hayhurst, M.D. (collectively “S&N”) via teleconference, but have been unable to do so.

ARTHREX, INC.’S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR ALTERNATIVELY A NEW TRIAL ON THE ISSUE OF LOST PROFITS

At the close of trial Arthrex moved this Court for judgment as a matter of law on several issues, including lost profits. D.I. 973, 974. Arthrex also moved in the alternative for a new trial, citing the jury’s lost profits award as one of its bases. D.I. 976, 977. The Court’s ruling on Arthrex’s motion for judgment as a matter of law was based on non-infringement. Because it was moot, the Court did not address Arthrex’s motion for judgment as a matter of law with respect to lost profits or its alternative motion for a new trial on the issue of lost profits. *See* D.I. 1035. D.I. 1034. However, in view of the ruling of the Court of Appeals for the Federal Circuit (D.I. 1049), these motions are no longer moot. Accordingly, Arthrex hereby renews its prior motions by moving for judgment as a matter of law on lost profits and moving in the alternative for a new trial on the issue of lost profits. The bases for this renewed motion are presented in the accompanying memorandum.

Dated: May 6, 2013

By: /s/ Charles W. Saber

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2013, I caused the foregoing **ARTHREX, INC.'S**
RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR
ALTERNATIVELY A NEW TRIAL ON THE ISSUE OF LOST PROFITS to be
electronically filed with the Clerk of the Court using the CM/ECF system, which will send
notification of such filing to the following counsel of record:

Counsel for Smith & Nephew Inc. and John O. Hayhurst, M.D.

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